

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 03-10383-RGS

UNITED STATES OF AMERICA

v.

DOMINGO VEGA

MEMORANDUM AND ORDER ON  
PETITIONER'S MOTIONS (1) TO PROCEED  
IN FORMA PAUPERIS, AND (2) FOR WRIT OF MANDAMUS

August 21, 2006

STEARNS, D.J.

The motions are DENIED. Petitioner states that the motions are brought to facilitate the "proper consideration of his meritorious claims raised pursuant to 28 U.S.C. § 2255."

Paragraph 7 of petitioner's plea agreement reads in relevant part as follows.

7. Waiver of Rights to Appeal and to Bring Collateral Challenge

Defendant is aware that he has the right to challenge his sentence and guilty plea on direct appeal. Defendant is also aware that he may, in some circumstances, be able to argue that his plea should be set aside, or his sentence set aside or reduced, in a collateral challenge (such as pursuant to a motion under 28 U.S.C. § 2255).

In consideration of the concessions made by the U.S. Attorney in this Agreement, defendant knowingly and voluntarily waives his right to appeal or collaterally challenge:

- (1) Defendant's guilty plea and any other aspect of Defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues; and
- (2) The imposition by the District Court of a sentence which does not exceed that being recommended by the U.S. Attorney pursuant to this Agreement.

Waivers of appellate rights entered as part of a knowing and voluntary plea agreement are enforceable. See United States v. Gil-Quezada, 445 F.3d 33, 36 (1st Cir. 2006). While petitioner's agreement made an exception for an appeal "based solely on the argument that the District Court misunderstood the scope of its authority to depart from the applicable Sentencing Guidelines range," the court sentenced petitioner to the mandatory minimum number of months prescribed by statute and no more. Consequently, the exception does not apply in any circumstance.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE